

## **MINUTES OF JANUARY 7, 2019**

The regular meeting of the Sussex County Board of Adjustment was held on Monday, January 7, 2019, at 7:00 p.m. in the County Council Chambers, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman John Mills presiding. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills and Mr. Brent Workman. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Janelle Cornwell, Planning and Zoning Director, Mr. Jamie Whitehouse – Planning Manager, and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Mr. Mills.

The agenda was revised to hear old business at the end of the meeting and to change the order of the agenda to move Application number 12251 to the beginning of the public hearings. Motion by Mr. Callaway seconded by Mr. Mears and carried unanimously to approve the revised agenda. Motion carried 5 – 0.

Motion by Mr. Callaway, seconded by Mr. Mears, and carried unanimously to approve the Minutes and Findings of Facts for October 15, 2018. Motion carried 5 – 0.

Mr. Sharp read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the case.

### **PUBLIC HEARINGS**

**Case No. 12251 – GNJ Properties, LLC** seeks variances from the front yard setback, rear yard, and side yard setbacks for existing structures (Sections 115-25 and 115-185 of the Sussex County Zoning Code). The property is a through lot located on the south side of Delmar Rd. and the north side of Waller Rd. approximately 617 ft. east of W. Line Rd. 911 Address: 8759 Waller Rd., Delmar. Zoning District: AR-1. Tax Parcel: 532-20.00-31.00.

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and one mail return. The Applicant initially sought a variance of 5.1 feet from the fifteen (15) feet side yard setback requirement on the west side for an existing building, a variance of 5.9 feet from the fifteen (15) feet side yard setback requirement on the west side for an existing building, a variance of 9.6 feet from the fifteen (15) feet side yard setback requirement on the west side for an existing building, a variance of 9.9 feet from the fifteen (15) feet side yard setback requirement on the west side for an existing building, a variance of 10.5 feet from the forty (40) feet front yard setback requirement for an existing dwelling, a variance of 14.9 feet from the forty (40) feet front yard setback requirement for an existing dwelling, and a variance of 12.3 feet from the twenty (20) feet rear yard setback requirement for an existing building.

The Applicants submitted a written request that the case be withdrawn because their surveyor

nor their attorney could not attend the meeting this evening. The withdrawal request was submitted on January 7, 2019.

Ms. Magee moved to deny the request to withdraw the Application.

Motion by Ms. Magee, seconded by Mr. Mears, and carried unanimously that the **request to withdraw the Application be denied**. Motion carried 3 – 2.

The vote by roll call; Mr. Workman – nay, Ms. Magee – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – nay.

Mr. Mills then opened the public hearing.

The Board found that no one appeared in support of the Application and 8 people appeared in opposition to the Application.

Mr. Callaway moved to deny the Application due to a lack of representation.

Motion by Mr. Callaway, seconded by Mr. Mears, and carried unanimously that the **variances be denied**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 12248 – Victor & Deana Yokimcus** seek a variance from the rear yard setback for an existing structure (Section 115-25 of the Sussex County Zoning Code). The property is located on the southeast corner of Woodland Cir. and Ashwood Ct. in the Angola by the Bay subdivision. 911 Address: 32822 Ashwood Ct., Lewes. Zoning District: AR-1. Tax Parcel: 234-11.20-321.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and one mail return. The Applicants are requesting a 5 ft. variance and a 4.7 ft. variance from the required 15 ft. rear yard setback for an existing screen porch.

Victor Yokimcus and Deana Yokimcus were sworn in to give testimony.

Mr. Yokimcus testified that the Property is a small corner lot; that the house takes up most of the building envelope; that he added a small screen porch to the rear of the house; that there was an existing concrete pad on the site; and that his contractor Backyard Works obtained the permit for the porch.

Mrs. Yokimcus testified that that they applied for a variance months ago and were informed

by the HOA that a variance was not needed and they withdrew the request; and that, after building the porch, they were informed by Sussex County staff that the porch did not meet setbacks.

Mr. Yokimcus testified that he has a large extended family including a brother-in-law who has special needs; that mosquitoes and flies are a problem on the Property; that the porch matches the house; that there was some confusion as to what was considered the front yard and he thought this was considered the side yard; that there are similar porches in the neighborhood; and that this porch fits with the aesthetics of the neighborhood.

Ms. Cornwell advised the Board that the setbacks are incorrectly shown on the survey because the Property is an undersized lot with reduced setbacks.

Mr. Yokimcus testified that there was no other place on the property to build a screen porch; that it was not caused by the Applicants as they depended on the contractor to follow setbacks; that it will not alter the essential character of the neighborhood as it matches the style of the house; that there are no steps to the porch; that the concrete pad is used for a grill; that it is the minimum variance to allow a screen porch to enjoy outdoor living without dealing with insects; that he cannot effectively use the outdoor space due to the bugs; and that he maintains approximately ½ of the common area to the rear and the HOA maintains the other half.

The Board found that no one appeared in support of or in opposition to the Application.

Mr. Mears moved to approve Variance Application No. 12248 for the following reasons:

1. The uniqueness of the lot is that it is a small corner lot with a limited building envelope;
2. The Property cannot otherwise be developed as there is very little buildable area;
3. The exceptional practical difficulty was not created by the Applicants but by the builder who did not follow County setbacks;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances requested are the minimum variances necessary to afford relief.

Motion by Mr. Mears, seconded by Ms. Magee, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Mears – yea, Ms. Magee – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 12249 – Ashton Group, Ltd.** seek variances from the front yard setback requirements for a proposed and existing structures (Sections 115-82 and 115-182 of the Sussex County Zoning Code). The property is a through lot located on the south side of Oyster House Rd. and northeast side of Coastal Hwy. (Rt. 1). 911 Address: 37458 Oyster House Rd., Rehoboth Beach. Zoning District: C-1.

Tax Parcel: 334-19.08-31.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicants are requesting the following variances for additions to an existing building: a 52 ft. variance from the required 60 ft. front yard setback to Rt. 1; a 30.2 ft. variance from the required 60 ft. front yard setback from Oyster House Road.

Joseph Ashton and Nicole Bailey Ashton were sworn in to give testimony. Tim Willard, Esquire, was present on behalf of the Applicant, presented the Application. Mr. Willard distributed larger copies of the survey of the property to the Board members.

Mr. Willard stated that Joe and Nicole Ashton are the owners of the Ashton Group, Ltd. and they wish to add a modest extension to their offices to make additional space for employees; that the Applicant operates a landscaping business; that the Applicant purchased the property a couple of years ago; that the Board previously granted a variance for the previous owner to build a pergola; that the property is very unique in shape and fronts on 3 roads; that the Property is zoned General Commercial; that the proposed addition will measure 1,054 square feet; that the Applicants have 5 employees and need additional space; that the addition towards the connecting road will have an addition, porch, and steps; that the addition on the other side of the building will measure 10 feet; that the preexisting dwelling was constructed in the setback areas; that the variances are necessary to enable reasonable use of the property; that the business has some clients but it is not a retail establishment; that the property has 9 parking spaces and meets the Code requirements; that it cannot be otherwise developed because of the C-1 setbacks of 60 ft.; that it was not caused by the Applicant but was like this when purchased; that the variances will not alter the essential character of the neighborhood as there are commercial buildings in this area such as a bike shop, Big Fish Grill, and office space; that the unique condition of the property was not created by the Applicant; that the sign for the business was placed on the property by a prior owner; that DelDOT did not object to the sign; that the site is well-maintained and that the Applicant is building a very modest addition to give him more room to run his business and is asking for a minimal variance.

Mr. Ashton affirmed the statements made by Mr. Willard as true and correct. Mr. Ashton testified that the pergola has been removed; that Applicant's surveyors had difficulty locating the property corners and it delayed this process; and that the facility will have an HVAC system as well.

During testimony additional variances were shown to be needed. The following are all the variances required to bring this property into compliance:

1. 52 ft. from the required 60 ft. front yard setback from Rt. 1 for the proposed porch on the west side of building;
2. 30.2 ft. from the required 60 ft. front yard setback from Oyster House Rd. for the proposed porch on the west side of building;

3. 24 ft. from the required 60 ft. front yard setback from Oyster House Rd. for proposed steps on west side of building;
4. 27 ft. from the required 60 ft. front yard setback from Rt. 1 for proposed steps on west side of building;
5. 16 ft. from the required 60 ft. front yard setback for the steps from Oyster House Rd. on north side of building;
6. 50.9 ft. from the required 60 ft. front yard setback from Rt. 1 for the proposed addition on the east side of the building;
7. 4.1 ft. from the required 60 ft. front yard setback from Oyster House Rd. for the proposed addition on the east side of the building;
8. 51.9 ft. from the required 60 ft. front yard setback from Rt. 1 for the proposed addition on the west side of building;
9. 26 ft. from the required 60 ft. front yard setback from Oyster House Rd. for the proposed addition on the west side of building;
10. 22.6 ft. from the required 60 ft. front yard setback from Oyster House Road for the existing building;
11. 51.7 ft. from the required 60 ft. front yard setback from Rt. 1 for the existing building;
12. 56 ft. from the required 60 ft. front yard setback from Rt. 1 for HVAC system.
13. 51.1 ft. from the required 60 ft. front yard setback from Rt. 1 for the existing building and proposed addition.

The Board found that no parties appeared in support of or in opposition to the Application.

Ms. Magee moved to approve Variance Application No. 12249 for the following reasons:

1. The uniqueness of the lot is that it is a pie-shaped lot located on three public roads;
2. The Property cannot otherwise be developed;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variances will not alter the essential character of the neighborhood; and
5. The Applicant is asking for the minimum variances necessary.

Motion by Ms. Magee, seconded by Mr. Callaway, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Mears – yea, Ms. Magee – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 12250 – Commercial Joint Ventures, LLC/ Gerald Hocker** seeks variances from separation distance, the front yard setback, side yard setback, and rear yard setback for existing structures (Section 115-172 of the Sussex County Zoning Code). The property is located south of Atlantic Ave. approximately 943 ft. east of Roxana Rd. 911 Address: Bethany Crest Mobile Home Park, Clarksville. Zoning District: C-1 and AR-1. Tax Parcel: 134-12.00-335.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received no correspondence in support of and one letter of opposition to the Application and zero mail returns. Specifically, the applicant is requesting a blanket variance for the entire Bethany Crest Manufactured Home Park. Those variances include a 5 ft. variance from the 20 ft. required separation distance between units; a 3 ft. variance from the required 5 ft. front yard requirement for units; and a 2 ft. variance from the required 5 ft. rear yards requirement for units.

Mr. Gerald Hocker was sworn in to give testimony. Mr. Hocker testified that he is the owner of Bethany Crest Mobile Home Park; that the park was created in the early 1960s and he lived there in the 1970s; that he has made improvements to the park and put in a new water system and central sewer; that the park previously had failing septic systems but he connected the park to the Millville Sewer District; that he owns adjacent commercial lands; that he paved the road within the park; that, if the variances are denied, he will be unable to use 19 lots in the park; that only a small corner of the houses encroach into the setback areas; and the property is unique because of the angled lots.

Ms. Cornwell advised the Board that a singlewide or doublewide manufactured home cannot fit on the lots due to their length without a variance.

Mr. Hocker testified that he cannot purchase smaller model homes and that length is the issue.

Ms. Cornwell advised the Board that the variances are needed due to the shallowness of the lots and that a blanket variance was suggested to alleviate the situation; and that Lot 3 needs a variance for the accessory structure.

Mr. Sharp noted that the right-of-way cuts into the lot area as well.

Mr. Hocker testified that he agrees with Mr. Sharp and Ms. Cornwell; that the lots are shallower on one side of the park than the other side; that the angled lot shape also creates an issue; that he recently lost a sale of a manufactured home due to the setback issues; that most of the homes are tenant-owned; that there is a gap between the edge of paving and the front property line; and that he plans to place sheds on all lots.

During testimony additional variances were shown to be needed. The following variances are required: 1) a blanket 10 ft. variance from the 20 ft. separation requirement between dwellings and other accessory structures on adjoining units and 2) a blanket 5 ft. variance from the required 5 ft. side yard setback for accessory structures to the property line.

The Board found that no one appeared in support of or in opposition to the Application.

Ms. Magee moved to approve Variance Application No. 12250 for the blanket variances for the following reasons:

1. The Property is unique because it is used as a non-conforming manufactured home park which dates back to the 1960s;
2. The variances will not alter the essential character of the neighborhood; and
3. The variances requested are the minimum variances necessary to afford relief.

Motion by Ms. Magee, seconded by Mr. Callaway, and carried unanimously that the **variances be granted for the reasons stated.** Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Mears – yea, Ms. Magee – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**The Board took an eight (8) minute recess.**

**Case No. 12252 – Geraldine Marie Piper** seeks a special use exception to operate a day care center (Sections 115-23 & 115-210 of the Sussex County Zoning Code). The property is located on the west side of Susan Beach Rd. approximately 0.3 mile north of White Deer Rd. Address: 36298 Susan Beach Rd., Delmar. Zoning District: AR-1. Tax Parcel: 532-11.00-17.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicants is seeking a special use exception to operate a day care center for up to twelve children within an existing structure.

Geraldine Marie Piper was sworn in to give testimony.

Ms. Piper testified that she currently operates a day care center for six children; that she wishes to expand and therefore requires a special use exception; that hours of operation are 7 a.m. – 5:30 p.m. Monday through Friday; that the day care center has been in operation for four years; that there is parking available and parking has not been an issue; that she can park up to 9 cars in her driveway and other parking is available; that she seeks to expand the daycare to up to 12 children; that she has 1 employee; that the building consists of 1,800 square feet – of which ½ is used for the daycare; that she owns neighboring lands; that she spoke with her other neighbor and they do not object; that this will not substantially affect adversely the uses of adjacent and neighboring properties as the property is located in a very rural area; that the rear yard is fenced in; and that there have been no complaints from neighbors.

The Board found that one person appeared in support of and no parties in opposition to the Application.

Mr. Mears moved to approve Application No. 12252 for a special use exception as it will not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Mr. Mears, seconded by Ms. Magee, and carried unanimously that the **special use exception be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Mears – yea, Ms. Magee – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 12253 – Reddenwood II, LLC** seeks a special use exception to use a manufactured home type structure as an office (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the east side of Black Willow Dr. in the Reddenwood II subdivision accessed through the Reddenwood I subdivision off Neptune Rd. Address: N/A. Zoning District: AR-1. Tax Parcel: 135-7.00-12.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicants is seeking a special use exception for a three-year period for a temporary sales trailer to serve prospective home buyers within the approved subdivision.

Ring Lardner was sworn in to give testimony. Mr. Lardner distributed an exhibit to Board members.

Mr. Lardner testified that the subdivision will consist of 41 homes; that homebuilding will begin in March 2019; that, due to the small size of the subdivision, it would not be cost efficient to construct a traditional sales model home that would be found in larger communities; that the request is to place a temporary sales trailer for a period of three years; that the unit will not substantially affect adversely the uses of adjacent and neighboring properties; that the sales center has a clean and beachy appearance and is the same type of sales center used at two other communities; that a similar special use exception was previously approved at 2 other Schell communities; that the sales center will be placed outside home site number 77 facing Black Willow Dr. and will create an attractive appearance for neighboring residents as they drive or walk by; that the area will be landscaped with a variety of flowers and trees; that waste water will be collected under the sales center in a holding tank and will be pumped on an as needed basis and water will be provided by either a well or a holding tank; that there will be motion sensitive lights to provide for a safe and secure site; and that the sales center will be staffed by appointment only, so traffic will be minimal.

The Board found that no one appeared in support of or in opposition to the Application.

Ms. Magee moved to approve Application No. 12253 for a special use exception for the placement of a temporary sales trailer for the residential community for a period of three years.



Motion by Ms. Magee, seconded by Mr. Callaway, and carried unanimously that the **special use exception be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Mears – yea, Ms. Magee – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 12254 – Gary Needham** seeks a variance from the side yard setback and rear yard setback for a proposed structure (Section 115-25 of the Sussex County Zoning Code). The property is located on the southwest corner of Gainsborough Dr. and Sheffield Ct. in the Rolling Meadows Subdivision. 911 Address: 28 Gainsborough Dr., Lewes. Zoning District: AR-1. Tax Parcel: 334-6.00-927.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received one letter in support of and three letters in opposition to the Application and one mail return. The Applicant is requesting an 8.5 ft. variance from the required 15 ft. side yard setback on the west side for a proposed structure. Mr. Whitehouse stated that there was some question as to whether a side yard setback variance or a rear yard setback variance was needed since the mapping and assessment office refers to Gainsborough Drive as the front yard but 911 refers to Sheffield Court as the front yard.

Randy Burton was sworn in to give testimony about the Application.

Mr. Burton testified that he is the builder for the Applicant; that mail is received at 1 Sheffield Court; that the Applicant believes it is seeking a side yard variance; that the request is to place a small addition off the current living room to increase living space in the home; that the Applicant has some health needs where he needs to put some gym equipment in the home but also needs additional living space; that the property is unique because it is a corner lot and has two front yards; that it cannot otherwise be developed as there is no other area to add living space to the house that would work with the current layout; that the Applicant cannot build the addition south due to the location of an existing bedroom; that the addition is needed for use and enjoyment of the property; that there is an existing deck on the west side of the house; that the situation was not created by the client; that this addition will not alter the essential character of the property as it will be built on the current deck and there is a hedgerow along the property line which will block the view of the new addition; that it is the minimum variance request to afford relief; that there is no well or septic on the site; and that house was built by a prior owner.

Marcia Kasony was sworn in to testify in opposition to the Application. Ms. Kasony testified that she opposes the Application; that she did not receive notice of the public hearing by mail; that the HOA Architectural Review Committee only received information regarding this addition on January 3; that she owns adjacent property to the west; that she appreciates the Applicant's handicap and need for the additional room but believes the Applicant could reconfigure his home to build to the south; that she is concerned about the privacy barrier being damaged during construction and her privacy being compromised; that there are trees along the shared boundary line; and that she is concerned about the proximity of the addition to the root structure of those trees.

Steve Hyle was sworn in to give testimony about the Application. Mr. Hyle testified that he is not opposed to or in support of the Application; that he represents the HOA; that the HOA has not yet approved Mr. Needham's request; that the addition must meet the restrictive covenants for the community; and that the Architectural Review Committee has not had an opportunity to review the request.

The Board found that one person appeared in support of and one person appeared in opposition to the Application.

Mr. Mears moved to approve Variance Application No. 12254 for the following reasons:

1. The uniqueness of the lot is that it is a corner lot with the house positioned close to the west side;
2. The property cannot otherwise be developed because of the layout of the floor plan of the house;
3. The exceptional practical difficulty was not created by the applicant because he bought an existing house long before this need arose;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance requested is the minimum variance request to achieve the Applicant's request.

Motion by Mr. Mears, seconded by Mr. Callaway, and carried unanimously that the **variance be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Mears – yea, Ms. Magee – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 12255 – Delaware Department of Transportation** seeks a special use exception to use a manufactured home type structure as an office (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the southeast corner of DuPont Blvd. (Rt. 113) and S. Bedford St. 911 Address: 23697 DuPont Blvd., Georgetown. Zoning District: AR-1. Tax Parcel: 135-23.00-13.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicants is seeking a special use exception for a temporary mobile office trailer for a period of two years to accommodate up to eight DelDOT staff.

Skip Sanders was sworn in to give testimony.

Mr. Sanders testified that the request is for a temporary office which will be placed in the

parking lot; that the unit will serve as offices for eight consultant construction inspectors; that the unit will measure 12 feet by 60 feet; that the inspectors will spend a small portion of the day at the office and then be off-site for the greater part of the day; that there is a possibility that the unit will be used for night work; that a fire permit has been obtained; that the trailer will not have water but will be served by an HVAC system; that the Applicant requests the relief for a period of 2 years; that, after two years, the trailer will be moved to a maintenance yard in another district; that the administration building is too full and the additional space is needed; that the State owns the Property; that the workers will use the restroom in the administration building; that the unit is in good condition; that there is plenty of parking on the Property; and it will not substantially affect adversely the uses of adjacent and neighboring properties

The Board found that no one appeared in support of or in opposition to the Application.

Ms. Magee moved to approve Application No. 12255 for a special use exception for a manufactured type structure to be used as an office for DelDOT for a period not to exceed two years.

Motion by Ms. Magee, seconded by Mr. Callaway, and carried unanimously that the **special use exception be granted for a period of two (2) years for the reasons stated.** Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Mears – yea, Ms. Magee – yea, Mr. Mills – yea, and Mr. Callaway – yea.

### **OLD BUSINESS:**

**Case No. 12239 – Jason & Stacy Harshbarger** seek a special use exception to build a dwelling (stick built/modular) in a non-conforming mobile home park (Section 115-210 of the Sussex County Zoning Code). The property is located on the south side of S. Shore Dr. Ext., approximately 350 ft. southwest of Marina View Ct. 911 Address: 32 South Shore Dr., Bethany Beach. Zoning District: MR. Tax Parcels: 134-2.00-3.01 and 134-2.00-4.00

Mr. Whitehouse presented the case which was tabled at the Board's meeting on December 10, 2018 and again on December 17, 2018.

Mr. Sharp stated that this request initially came before the County in the spring of 2017 when the Applicant wanted to put a stick-built dwelling in a manufactured home park; that Ms. Cornwell determined that there was no remedy within the County Code for what the Applicant sought; that the Applicant then appealed to the Board and in September 2017 a hearing was held after which the Board affirmed Ms. Cornwell's decision; that the Board's decision was subsequently appealed to Superior Court and Superior Court affirmed in part and denied in part; that the Court's denial was due to the fact that there were four other similar cases which were approved in this non-conforming manufactured home park and that the Court found that the Board was arbitrary and capricious in not

going back and researching why the previous cases had been considered; that the Code section that is at issue is §115-210 A 3 (i) which states that “a determination, in cases of uncertainty, of the district classification of any use not specifically named in these regulations; provided, however, that such use shall be in keeping with uses specifically permitted in the districts in which such use is to be classified”; that the Board has a special use exception request but also has to make a determination if this section of County Code applies; that the previous applications reference this section of Code in the advertisement but, when you look at the Board’s decisions, there was no determination made regarding this section of Code; that Board should consider whether section §115-210 A 3 (i) of the County Code applicable to this request; that, if the Board finds it is applicable then they must make a determination what is the use not specified in the regulation; that, if it does not apply, then the Board needs to examine why the Board approved such cases in the past; and that the second part of this analysis is whether the special use exception will substantially affect adversely the uses of adjacent and neighboring properties.

The Board discussed the Application.

Mr. Mears moved to determine that Code §115-210 A 3(i) does not apply to this request and did not apply to the prior cases but, in the prior cases, the Board did not examine §115-210 A 3(i) and its applicability; that those cases were not examined as to that specific section of Code; and that the prior applications were presented to the Board as special use exceptions and Board reviewed the prior applications as a special use exceptions.

Motion by Mr. Mears, seconded by Mr. Workman, and carried unanimously. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea.

The Board discussed the merits of a special use exception standards.

Mr. Mears moved notwithstanding the prior motion that the proposed stick-built dwelling would not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Mr. Mears, seconded by Ms. Magee, and carried unanimously. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 12242 – Louis Capano, Jr.** seeks variances from the maximum fence height requirement and the side yard setback for existing structures (Sections 115-34, 115-181, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the east side of E. Lake Dr.

approximately 900 ft. south of Queen St. 911 Address: 21436 East Lake Dr., Rehoboth Beach. Zoning District: MR. Tax Parcel: 334-20.10-1.08

Mr. Whitehouse presented the case which was left open at the Board's meeting on December 17, 2018. The record was left open for the limited purpose of allowing the Applicant to submit building plans and to appear tonight to respond to questions from the Board. Mr. Whitehouse stated that plans were submitted by the Applicant and circulated to the Board.

Jim Katelan was sworn in to give testimony. Mr. Katelan testified that he gave the drawings to surveyor to stake out the building and relied on the surveyor to stake out the setbacks for construction.

The Board discussed the Application.

Ms. Magee moved to approve the variance requests for the HVAC units, deck and generator and to deny the variance for the fence height because the Applicant can comply with the fence height requirement.

Ms. Magee moved, seconded by Mr. Workman, and carried unanimously to **approve the variance requests in part and to deny the requests in part.** Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Mears – yea, Ms. Magee – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Meeting was adjourned at 10:05 p.m.**